

Shortly before G.'s assignment for benefit of creditors his bookkeeper transferred to the bank a chattel mortgage given him by G. to secure payment of \$800. The judgment appealed from ordered the assignee in bankruptcy to pay the bank the balance due on said mortgage.

Held, reversing said judgment, that the assignee had been guilty of no acts of conversion and was not liable to repay this money. The mortgage was not given to secure advances and did not give the bank a first lien on the property. The bank was in the same position as if it had received the mortgage directly from G. when he was notoriously insolvent. Appeal of Houston dismissed with costs. Appeal of Ward allowed with costs.

Taylor, K.C., for Houston. *Garrow*, K.C., for Ward. *Sir C. H. Tupper*, K.C., for respondent.

N. B.]

WESTERN ASSURANCE CO. v. TEMPLE.

[June 5.

Insurance against fire—Conditions in policy—Sole and unconditional owner—Mortgagor—Other insurance—Estoppel.

T. insured property against fire, the policy containing a condition that "if the insured is not the sole and unconditional owner of the property, or if any building intended to be assured stands on ground not owned in fee simple by the assured, or if the interest of the assured in the property whether as owner, trustee, assignee, factor, agent, mortgagee, lessee or otherwise is not truly stated in this policy . . . this policy shall become void unless consent in writing by the company be indorsed thereon." At the time the policy was issued there was a mortgage on the insured property for a small amount, the existence of which was not disclosed to the company, T. insuring as owner.

Held, affirming the judgment of the Supreme Court of New Brunswick, that the mortgage did not avoid the policy under the said condition.

Another condition of the policy provided that it should become void unless consent was indorsed on it "if the assured have or shall hereafter obtain any other policy or agreement for insurance, whether valid or not, on the property above mentioned or any part thereof." While the policy was in force the insured's son, without his knowledge, applied to the Quebec Fire Insurance Co. for a policy on the same property, but before he was notified of the acceptance of his application the property was destroyed by fire. In an action on another policy containing a similar condition (except that it provided for notice to the company issuing the policy of such other insurance) the Supreme Court of Canada held the policy not avoided. *Commercial Union Assurance Co. v. Temple*, 29 S.C.R. 206. In one count of his declaration in the present case (drawn before said decision) T. admitted having obtained the other insurance, but alleged that endorsement of consent thereto had been waived. At the trial (after said decision was given) no evidence was offered under this count, but counsel for the company consented to the record in the Commercial Union Case being put